A Caution to the Directors of the East-India Company, with Regard to Their Making the Mid-summer Dividend of Five per Cent.

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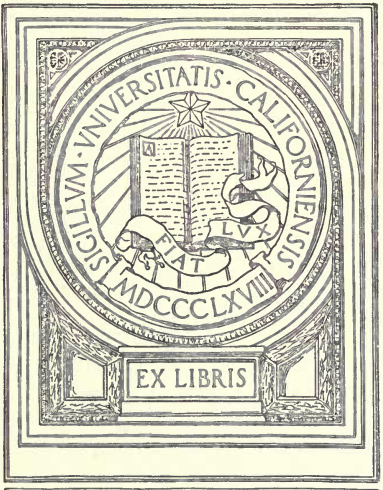

A CAUTION TO THE DIRECTORS OF THE EAST-INDIA COMPANY,

With regard to their making the

Midsummer Dividend of Five per Cent.

WITHOUT

Due Attention to a late ACT of PARLIAMENT, and a BY-LAW of their own.

"Upon the Whole, I will beg Leave to tell what is really "my Opinion: It is, that it be repealed absolutely, "totally, and immediately."

A late celebrated Speech.

LONDON:
Printed for GEORGE KEARSLY, in Ludgate-Street.
MDCCLXVII.

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A

CAUTION

TO THE

DIRECTORS, &c.

GENTLEMEN,

PERHAPS there never was such a neceſſity, for an addreſs to you upon the ſubject of *caution*, ſince the East-India company was eſtabliſhed, as at preſent.---Your great ſucceſſes in India, have drawn upon you the envy of your own countrymen, as well as the other European powers; the great increaſe of your dividend, has alarmed the proprietors of other funds for their own property; the differences among yourſelves, and your fellow-

 proprietors,

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proprietors, have furniſhed this envy, and theſe fears, with the means perhaps of overturning your conſtitution.

Tho' I will not preſume to determine, whence theſe differences aroſe, or who have been to blame, that not being part of the preſent deſign, you will agree with me they have drawn upon you the notice of the legiſlature, and have produced an act of parliament, that affords either party but little cauſe for rejoicing, however grateful it may be to the public. I muſt ſuppoſe you would wiſh to keep your *golden fleece* to yourſelves---union among yourſelves would have ſecured it---but your differences have exaſperated the watchful dragon, the *guardian* of this *treaſure*, and you now only hold it in *partiripation*---A ſtrange *participation* too, where the public is to receive four hundred thouſand pounds, while you are to receive *nothing*---I ſay *nothing*---for I ſhall endeavour to prove you cannot make your dividend of 5 l. *per cent.* due the 5th of laſt July, nor will you be able, as things now ſtand, to declare the

dividend of 5 l. *per cent.* at Chriſtmas next.

I am ſatisfied that ſuch a conſequence as this, will not be admitted without ſome proof; but I ſhould conceive very little proof neceſſary, to awaken your *caution*, at the time you are going to pay the 5 l. *per cent.* dividend, if it is but hinted, that it cannot be done without incurring a danger of the cenſure of parliament. I preſume only to recommend *caution*, but I will ſubmit to your better judgments, the reaſons which convince me, that while the late act of parliament, for regulating your dividends, remains in force, you cannot divide the 5 l. *per cent.* which you have declared payable the 5th of July laſt, nor can you declare, or make the like dividend of 5 l. *per cent.* at Chriſtmas next.

I will ſet down the proper clauſes in the ſeveral acts of parliament, with a letter of the alphabet before each, for the convenience of referring to them, as occaſion may offer.

CAP. 49. A.

" That no dividend ſhall be made by " the ſaid company, for, or in reſpect of " any time, ſubſequent to the 24th day of " June, 1767, otherwiſe than in purſu- " ance of a vote, or reſolution, paſſed by " way of ballotting, in a general court of " the ſaid company, which ſhall have been " ſummoned for the purpoſe of declaring a " dividend, and of the meeting of which " general court, ſeven days notice at the " leaſt, ſhall have been given in writing, " fixed upon the Royal Exchange in Lon- " don."

IBID.--- B.

" That it ſhall not be lawful, for any " general court of the ſaid company, at " any time between the eighth day of May, " 1767, and the beginning of the next " ſeſſion of parliament, to declare, or re- " ſolve upon, any encreaſe of dividend, " beyond

" beyond the rate of 10l. *per cent. per ann.*
" being the rate at which the dividend
" for the half year ending the 24th day of
" June, 1767, is made payable."

CAP. 48. C.

" That, from and after the 10th day
" of July, 1767, no declaration of a divi-
" dend ſhall be made, by any general
" court, of any of the ſaid company's,
" other than one of the half yearly, or
" quarterly general courts, at the diſtance
" of five calendar months, at the leaſt,
" from the laſt preceding declaration, of
" a dividend, and that no declaration of
" more than one half yearly dividend,
" ſhall be made by one general court."

29. BY-LAW. D.

" That no *alteration* be made in the di-
" vidend, on the capital ſtock of this
" company, without firſt giving ſix months
" publick notice."

By clauſe A, it appears that no dividend can be made, after the 24th of June, without the vote of a general court, (and by clauſe C, that muſt be a quarterly court) called for the purpoſe of declaring the intended dividend, with ſeven days previous notice thereof, in writing fixed upon the Royal Exchange—by the reſolution, of your court of directors, of the 22d of May laſt, as well as by your uniform practice in making dividends, the half year's dividend of 5 l. *per cent.* declared in September laſt, and now in courſe of payment, was due the 5th of July laſt, and that day, and not the 24th of June, is the day on which this dividend muſt be underſtood to be made, in conſequence of the September declaration. Now as this dividend declared to be made on the 5th of July, is made for and in reſpect of time ſubſequent to the 24th of June, and is made not in purſuance of a vote, carried by ballot, in a general quarterly court, ſummoned for the purpoſe of declaring a dividend, with ſeven days notice of ſuch a meeting, given in writing and fixed upon the Royal Exchange,

change, it is not warranted by the act, but is, according to the plain and obvious conſtruction of the act, *illegal*.

I have heard two objections, and two only, made to this conſtruction; one, that the legiſlature was miſtaken as to the time, in which the dividends are always made by this company, ſuppoſing them payable the 24th of June, inſtead of the 5th of July, and that they did not intend to prevent your dividing 5l. *per cent.* at Midſummer. The other, that if they were not miſtaken, and if they did intend to prevent your dividing the 5l. *per cent.* at Midſummer, the act itſelf fails in this intention, ſince it only prevents your dividing for eleven days, being the interval between the 24th of June and the 5th of July, and you are, on this account, left at liberty to pay the 5l. *per cent.* after deducting the proportional part for thoſe elven days.

As to the firſt, I think nothing can be more abſurd, than to ſuppoſe that the wiſdom of the legiſlature, ſhould be capa-

ble of ſuch a blunder. In order to this, we muſt ſuppoſe, that they who, in the ſame ſeſſion, made a law with reſpect to the publick funds, in which the dividends are fixed for payment on the 5th of July, and the 5th of January, could take it for granted that the India dividends were fixed for the 24th of June and the 24th of December; and we muſt ſuppoſe too that they could take this for granted, which is ſo contrary to the general practice in other funds, without making any enquiry of the directors, who daily attended, and were examined while the bill was paſſing: for if they did make enquiry, they muſt have heard that this company obſerved the ſame days of payment with the government, and have done ſo invariably from the original inſtitution; and in ſuch a caſe, the blunder can hardly be called the effect of overſight, but a wilful blindneſs.

This abſurdity is too groſs to paſs current, but the clauſe (C) in cap. 48 of the ſaid act, will ſhew that the parliament were not ignorant, that the dividends would

would become due on the 5th of July, but have proceeded on the conſideration of it's being due on that day. In this clauſe, they ſay, that no *declaration*, &c. ſhall be after the 10th of July. Now when they had in contemplation the *making* of a dividend, they mentioned the 24th of June, a time preceding the 5th of July, in order to prevent it; when they had in contemplation the *declaring* of a dividend, they ſay the 10th of July ſubſequent to the 5th, to diſtinguiſh between the terms *making* and *declaring*, which have been ſo often confounded.

It muſt appear highly improbable to every impartial mind, that the legiſlature ſhould enact a law, to regulate the making of dividends, without knowing the time, when they are made payable; or if they were ignorant, that they would not enquire, when the directors attended to anſwer all enquiries, and were actually examined from day to day, while the bill was framing; and very few will be hardy enough to affirm, that if the parliament were aware,

aware, that the dividends would be due the 5th of July, ſuch a blunder could creep into the act of parliament. The moſt natural conſtruction, upon reading the ſaid act, is, that the 24th of June was not inſerted by miſtake, but by deſign, and that the legiſlature plainly intended, in the reſtraining clauſes, that the India company ſhould make no dividend at all from Chriſtmas laſt, which was before the encreaſe of the dividend, to the beginning of the next ſeſſion of parliament; in which time, all your homeward-bound ſhips would arrive, the Midſummer annual account would be made up, and the miniſtry would have an opportunity of learning from Lord Clive, what was the real ſituation of the affairs in India.

I know it is commonly imagined to have been the intention of parliament, to reſcind the reſolution of the 6th of May about the 6 l. and 1-4th *per cent.* but this imagination is contrary to fact, for that reſolution is unrepealed, unreſcinded, and unleſs the parliament, at the next meeting, ſhall make

ſome

ſome law to prevent it, you may divide 61. 1-4th *per cent.* at Chriſtmas next---No ſingle word, in either act of parliament, mentions the reſolution of the 6th of May, and the act which reſtrains the dividing between the 8th of May, and the beginning of the next ſeſſion, manifeſtly avoided mentioning the 6th of May, and made the interval of reſtraint commence on the 8th, to ſhew it did not mean to reſcind the reſolution of the 6th of May. Had the parliament deſigned to reſtrain the dividing according to that reſolution at Chriſtmas next, the interval of reſtraint would have gone beyond the 5th of January---as that clauſe, which reſtrains the preſent dividend, the manifeſt object of the parliament, ſtopt ſhort of the 5th of July, and would not have ſtopt, as it has done, at the beginning of the next ſeſſion of parliament.

The preamble of the act profeſſes nothing for its object, but "to ſecure as "well the permanent intereſt of the com-

"pany,

" pany, as the ſtate of credit both pri-
" vate and public, from the miſchiefs
" which muſt enſue, from an impro-
" per, and improvident increaſe of the
" dividends of the ſaid company." Thus the parliament had in view only improper and improvident dividends, dividends made without a due regard to the circumſtances of the company, whether the ſame ſhould be 12l. 1-half *per cent.* 10l. *per cent.* or 6l. *per cent.* And I may appeal to yourſelves, Gentlemen, whether you had any objection to the dividend of 12l. 1-half taking place at Chriſtmas, that did not ariſe from a conſideration of theſe circumſtances, from your apprehenſion that your finances would not be ſuch at Chriſtmas, as to enable you to pay off the company's debts, to pay the 200,000l. the firſt half yearly payment to government, and to make a dividend of 6l. 1-4th to the proprietors. And I would aſk, Whether any other conſideration weighed with the legiſlature? You will confeſs, as the undoubted truth is, that this alone made you wiſh,

wiſh, that parliament would interpoſe to prevent the dividing 6 l. 1-4th at Chriſtmas. And I affirm this alone determined the wiſdom of the legiſlature to interpoſe for that purpoſe. They have interpoſed, and what have they done? They have ſtopped your making any dividend till the meeting of parliament. But they have determined nothing with reſpect to the 6l. 1-4th *per cent.* The reſolution of the 6th of May ſtands unrepealed; and if it ſhall then appear, ſuch an increaſe will not be improper, and improvident, at Chriſtmas next, if, I ſay, Gentlemen, after the arrival of the homeward-bound ſhips, after the examination of the annual account, which has never yet been produced, if after hearing the opinion of Lord Clive, concerning the real ſituation of your affairs in India, the flouriſhing ſtate of your trade, the regular payment of your revenue, and the ſtability of your poſſeſſions, you ſhall think that the 6 l. 1-4th *per cent.* may be paid without giving any cauſe of complaint to the creditors of the company,

and join with the general court in a repreſentation to the miniſtry, that ſuch an encreaſe will not be improper, or improvident, at Chriſtmas, there can be no reaſon to ſuppoſe, that parliament will again interpoſe, by a new act, to reſtrain your making ſuch a dividend; and if they do not interpoſe by a new act, you may divide 61. 1-4th *per cent.* by a due exerciſe of your preſent powers, as will be ſhewn in another place. But ſhould there, on the contrary, be any room, at the meeting of the parliament, to believe ſuch a dividend at Chriſtmas will be improper and improvident, it is no doubt the intention of parliament to make a new act, the next ſeſſion, to reſtrain your dividing 12l. 1-half *per cent*, 10l. *per cent.* 6l. *per cent.* or any *per cent.* at all, if it ſhall be ſo neceſſary, in order to prevent the miſchiefs recited in the preamble before mentioned.

The remedy provided by the wiſdom of the legiſlature, is, according to this conſtruction,

ſtruction, adequate to the miſchiefs apprehended; as at the time of making the act, the dividend even of five *per cent.* was proved by you, and nothing can be clearer than that you did prove it, to be improper and improvident, they have reſtrained it till the meeting of parliament, and as it may then be repreſented by you, that ſuch a dividend will not be improper, or improvident, they have made the time of reſtriction ſtop at that period, to give you a future power of dividing that ſum, or 6l. 1-4th agreeable to the reſolution of the 6th of May, if they ſee no reaſon for interpoſing againſt it. But if the legiſlature had not reſtrained you from making any dividend, between the 24th of June, and the beginning of the next ſeſſion of parliament, if they had left you to divide the 5l. *per cent.* dividend for the 5th of July, they would have provided no preſent remedy at all.

It is well known, you oppoſed the encreaſe of dividend to 10l. *per cent.* in September

tember laſt, and that you oppoſed it, upon the principle of it's being improper and improvident, from the ſtate of the account, then produced by you to the general court. You have frequently declared ſince, you thought this meaſure of raiſing the dividend to 10 l. *per cent.* *inexpedient* and unwarrantable, as the company have not diſcharged their debts--you oppoſed the reſolution of increaſing it to 12 l. 1-half on the 6th of May, in no other manner, but by producing in court the ſame ſtate of the company's affairs, upon which you oppoſed the increaſing it to 10 l. *per cent.* in the month of September, and declaring the ſtate of affairs was not altered ſince that time; from whence it was to be underſtood that there was, in your opinion, no better reaſon for dividing 6 l. 1-4th in May, than there had been for dividing 5 l. *per cent.* in September. On this principle, and on this principle alone, you called in the aid of the legiſlature, to aſſiſt you in preventing the miſchief, that muſt be produced by ſuch improper

proper and improvident dividends, and on this principle alone the parliament interpoſed to ſupport you---you proved to them you could not divide 6 l. 1-4th, you proved too, by the ſame arguments, that you could not divide 5 l. nay, that you could not divide at all; for I may with confidence affirm, that not a ſingle argument was advanced to prove the dividend of 6 l. 1-4th to be improper and improvident, that did not extend to prove the dividend of 5 l. *per cent.* or any dividend at all, equally ſo.

I am warranted to go farther. If the company would not, in your opinion, be in a condition at Chriſtmas to divide 6 l. 1-4th, when the homeward-bound ſhips ſhould have arrived, there was much leſs reaſon for ſuffering you to divide 5 l. *per cent.* at Midſummer, while the ſhips were ſtill upon the ſeas, the annual account unſettled, and the ſtate of your affairs in India unknown. And yet, after this it ſeems, we are to ſuppoſe the legiſlature did not

intend to prevent you making the 5l. *per cent.* dividend declared to be due the 5th of July. We are to ſuppoſe, that they did not intend to hinder your dividing after the rate of 10l. *per cent.* at Midſummer, when any dividend at all was proved improper and improvident, but that they intended to hinder your making a dividend after the rate of 12l. 1-half *per cent.* at Chriſtmas, when future arrivals, and future accounts, might make ſuch a dividend proper and expedient.

We all ſaw with concern, that the members of both houſes were detained in town, to lend the wiſhed-for interpoſition; had the Chriſtmas dividend been the ſole object of their attention, the buſineſs might have been poſtponed till the next ſeſſion, as that is expected to take place before this dividend can be made; and the rather, as thoſe lights may then be had, which could not be expected, though much wiſhed for, at the end of the laſt ſeſſion. But as preventing the dividend of 5l. *per cent.* declared

clared for the 5th of July, was the principal object, it was neceſſary to ſettle that buſineſs before the ſeſſion was cloſed; and I believe you are ſatisfied, Gentlemen, there was ſufficient evidence laid by you before both houſes, to prove a dividend of 5 l. *per cent.* improper and improvident at that time, whether you agree to determine a dividend with the deputy-chairman upon a caſh account, or with the chairman upon a general account. The wiſdom of the legiſlature has ſtopt your dividing at Midſummer, while your ability is doubtful, and has left it in your power, after the beginning of the next ſeſſion, to make a dividend of 6 l. 1-4th at Chriſtmas, if your ability is no longer doubtful at that time.

I preſume, the firſt objection is by this time ſufficiently anſwered, that it is clear the legiſlature made no miſtake when they inſerted the 24th of June; and that they meant to prevent any dividing between that day and the meeting of parliament.

I ſhall now proceed to the ſecond objection, *viz.* That whether the legiſlature meant to prevent the dividend of 5l. *per cent.* taking place the 5th of July or not, the act will not have the effect contended for—it is inſiſted, that the clauſe (A) which reſtrains the company from making "any dividend, for, or in reſpect of, any time ſubſequent to the 24th of June, 1767," includes no more than the eleven days, between that day and the 5th of July, and will not affect the reſt of the half year, but a proportionable dividend may be made up to the 24th of June.

By a reſolution of a general court, held in September laſt, the company declared, that they would make a dividend on the 5th of July, then next following, of 5l. for every hundred, for the half year between the 5th of January and the 5th of July following. The ſum to be divided, is 5l. for every hundred pounds. The time for which it is declared, is half a year. The day of payment 5 July. If the eleven days are deducted,

deducted, you will divide only 4 l. 13 s. 10 d. halfpenny, and not 5 l. for every hundred. The dividend will not be for half a year. Nor will it be due the 5th of July, but the 24th of June.—This, and the September reſolution, will be as different as any two propoſitions can poſſibly be, in which no ſingle term is common to both. And ſuch a dividend as this, can no more be ſaid to be made by virtue of the reſolution of September, than it can be ſaid to be made by virtue of the preceding reſolution, for dividing only 3 l. *per cent.* or that of the 6th of May for 6 l. 1-4th.

The dividends on the India company's property, are different from thoſe on the government ſtock. The latter are intended by parliament, to continue a certain, or uncertain number of years, and the rate of intereſt is fixed unalterably, during the continuance of ſuch ſtock, to be paid half yearly, on the 5th of January and the 5th of July; the India dividends have been declared by the company, when, how, for what time, and for what ſum, they

pleaſe. They might, before the 29th by-law was made, divide monthly, weekly, or on a diſtant day that cannot be called either a weekly, monthly, or half yearly payment; and before the appointed day, they might vary the dividend, might increaſe, decreaſe, or annul it.—Their uſual practice has been, to declare a certain ſpecific ſum to be paid on a certain day, for the half year between ſuch a day and ſuch a day, and not as the government does, an annual ſum payable half yearly.—They have not declared by the reſolution of September an annual dividend of 10 l. *per cent.* payable half yearly, in which caſe, perhaps, an apportionment might be admitted, but they have declared, the ſpecific ſum of 5 l. for every hundred, to be paid on the 5th of July; in like manner as on the 6th of May, they did not declare an annual dividend of 12 l. 1-half *per cent.* but the ſpecific ſum of 6 l. 5 s. to be paid for the half yearly dividend on the 5th of January next.

The

The general court in September had only in contemplation the apportionment of the dividend to the quantity of ſtock poſſeſſed by each proprietor; the diviſion of time was never under conſideration; the time was given, *viz.* half a year between the 5th of January and the 5th of July; had the quantity of ſtock been given, *viz.* had every proprietor held 100 l. and no more or leſs, the court would then have declared, that every proprietor ſhould receive 5 l. on the 5th day of July. If the time is altered, the original propoſition is changed; the proprietor of 100 l. ſtock, will not receive the 5 l. *per cent.* that was declared. And what is offered in lieu of it, is not to be found in any part of the reſolution, under which it is pre- to be made.

Again, if any caſe can be ſuppoſed to have happened, before the paſſing of theſe acts, that might have made it neceſſary, or prudent, for the India company to make

a dividend for four months, inſtead of ſix, would you, Gentlemen, have preſumed to make a proportionable dividend for four months, under the reſolution, that declared a dividend for ſix, or would not you rather have called together the proprietors to get this new reſolution made by a general court? you undoubtedly would, you certainly muſt; ſuch a change in the time of making dividends payable, muſt have been ſtiled an alteration in your dividend; and the 29th by-law would have made it neceſſary for you to give ſix months notice of ſuch an alteration. I would aſk, where the difference is, whether the alteration be from ſix months, to four months, or from 182 days, to 171, which is the preſent alteration? the one is an alteration of months, the other of days, but they are equally alterations, the alterations equally demand a new declaration, and are equally objects of the 29th by-law. And you can no more divide for 171 days, ending the

24th

24th of June, under a declaration that orders you to divide for 182, ending the 5th of July, than you could make three payments of four months in a year, under a declaration of two half yearly one's.

The legiſlature, in the act of parliament for the alteration of the ſtile, has ſaid, that Midſummer-day ſhall fall on the 24th of June; becauſe this alteration would have carried it otherwiſe to the 5th of July; the ſtocks however have not been affected by that act, the 5th of July, and the 5th of Jan. have been conſtantly the days of payment, for the Midſummer, and Chriſtmas dividends, for moſt of the government as well as the Eaſt India ſtocks. Would any adminiſtration alter the days of payment of the government ſtock, without the ſanction of parliament? you will not ſay, Gentlemen, they would. I will venture to affirm for you too, that you will not make this trifling alteration, of dividing for 171, inſtead

of

of 182 days, or, at leaſt, that you will firſt take the opinion of a general court upon it, that your enemies may not have room to ſay, that you did not care to call a court for this purpoſe, from a conſciouſneſs, that the 29th by-law, and the acts of parliament, would ſtand in your way, if you ſubmitted this difficulty to a ſerious diſcuſſion. They certainly do ſtand in your way, the legiſlature intended they ſhould ſtand in your way, and ſo long as that by-law, and theſe acts of parliament, remain in force, it will be impoſſible for you to divide the 5l. *per cent.* now in courſe of payment.

Before I diſmiſs this part of the argument, I muſt ſubmit to your conſideration two neceſſary conſequences, that muſt follow from your determining to make the dividend of 4l. 13s. 10d. halfpenny *per cent.* payable the 24th of June, inſtead of the 5l. *per cent.* that was declared payable the

5th

5th of July. Firſt, a great confuſion muſt ariſe in the foreign contracts; a Dutchman at Amſterdam ſells ſtock, on the 25th of June, to another of the ſame place; the dividend is underſtood by each party to be the property of the purchaſer, as no proprietor, foreign or domeſtic, is ignorant, that the India Midſummer dividend is payable, and has ever been payable, the 5th of July; and yet, according to this determination, the 41. 13s. and 10d. halfpenny *per cent.* will be the property of the ſeller. Secondly, it is well known much of the India ſtock is held in truſt, that A. ſhall enjoy the dividends for his life, and after his death they ſhall go to B. I am told ſuch a caſe has happened, in which, A. died the 27th of June laſt, it is certain the dividend would belong to B, if it is paid the 5th of July; but it will go to the executor of A, to the prejudice of B, if you pay the 4l. 13s. 10d. halfpenny for the dividend due the 24th of June.

Theſe are the reaſons which induce me to think, Gentlemen, that the legiſlature did not miſtake the time the dividends become due, that they did not mean the 5th of July, when they inſerted the 24th of June, that they intended to reſtrain the company from making any dividend, before the beginning of the next ſeſſion of parliament, and that they have effectually reſtrained you by the clauſe A.

Yet I will ſuppoſe, for the preſent, you ſtill think that the legiſlature had no ſuch intention of reſtraining the preſent dividend of 10 l. *per cent.* and inſerted the 24th of June, inſtead of the 5th of July, imagining the dividend became payable on the former, inſtead of the latter of thoſe days; would you, Gentlemen, in ſuch a caſe, take upon yourſelves to divide contrary to the expreſs words of an act of parliament? And would you juſtify this diſobedience to the law, by imputing a blunder to the only body

body upon earth in which we can allow infallibility? It will not ſurely give offence, if I preſume you may be miſtaken in your conſtruction of the act, while you fix the charge, of ſaying one thing, and meaning another, upon the king, lords, and commons of this realm; and ſhould your judgment not be infallible, and in your conſtruction of this law, the miſtake ſhould be on your ſide, ignorance will be but a poor plea for the breach of an act, which you arraigned upon the ſame principle. If the law maxim, *ignorantia legis neminem excuſat* is ever to be juſtified upon the principle of humanity, it will be in this caſe, where it interprets the law, contrary to the expreſs and obvious meaning of it.

If, for the ſake of argument, we admit that the legiſlature may have committed this blunder, do you allow it to be conſiſtent, with the rules of true policy, to let

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thoſe who are the objects of a law, become the interpreters, much more the correctors of it? Suppoſe a law ſhould prove hurtful to ſociety; let us ſuppoſe, if ſuch a caſe can be ſuppoſed, it would break in upon the ſecurity of life, liberty, and property, which it is the ſole object of law to ſupport? No power in this kingdom, can alter ſuch a law, but that which made it; and the judges, who are the interpreters of the law, are bound to determine all caſes which come under that law, according to the plain and obvious conſtruction of it. They cannot correct; their province is, to tell what the law is, not what it ſhould be. Will you aſſume a power to yourſelves, not granted to the king's judges? Will you, Gentlemen, preſume to interpret, that the legiſlature ſhould have ſaid the 5th of July, inſtead of the 24th of June; and determine, that the dividend ſhall be made which ſtands reſtrained by the expreſs words of that law?

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If you will correct the law, why will you not do it with as little violence as poſſible? Why will you not alter 1767, and ſay it ſhould be 1768? In that caſe, the law would not take place this twelve month, there would be no doubt about your dividends, in the mean time, and this will be but the alteration of a ſingle figure, while what you contend for, changes words as well as figures.

You will ſay, no doubt, that you do not deſire the proprietors ſhould divide 61. 1-4th at Chriſtmas, which they would, if this conſtruction was allowed; they are not in caſh, they have not paid their debts, is certainly a good argument, but not inſuperable, againſt dividing; you oppoſed the dividend of 5 l. *per cent.* in September, upon the ſame principles. That you ſhould not be in caſh, that you had not paid your debts,

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was your only objection at that time; and we now find you ſtraining the law, makeing an act of parliament ſay it meant July, when it ſaid June; and intended to inſert the figure 5, when it made uſe of 24, in order that you may now make this dividend, which you oppoſed when it was declared in September laſt. You would now make the legiſlature ſay, it was not their meaning to reſcind this dividend of 5 l. *per cent.* when they have reſcinded it in direct terms, becauſe you proved you ſhould not be in caſh, and ſhould not have paid your debts at the time it would be payable.

I will venture to affirm too, that you would not be half ſo inconſiſtent, in uſing the ſame induſtry, and following the ſame method of interpretation, to divide after the rate of 12 l. 1-half *per cent.* at Chriſtmas; for the legiſlature, as we have proved, have not ſhewn their intention of reſcinding

reſcinding abſolutely, this 12 l. 1-half, while the 10l. *per cent.* is reſtrained as matters ſtand, beyond all diſpute, and can never be made, but in defiance of the power of parliament, and without ſuch a defiance, as, if it is to be juſtified, will juſtify the violation of all law, divine and human. A law of England ſays, you ſhall *not* divide up to the 5th of July, being after the 24th of June; you ſubſtitute the 5th of July in the place of the 24th of June, and then ſay, you may divide up to the 5th of July. The law of Moſes ſays, Thou ſhalt *not* ſteal; you ſtrike out the word *not*, by a leſs violent alteration, and then theft becomes as little a crime in England, as it was at Sparta.

But I would beg leave to aſk, if the miſtake contended for ſhould be admitted on all hands, would you take upon yourſelves to correct it, or wait till it was rectified by parliament? If when a deed is

executed, a miſtake is diſcovered, it cannot be corrected without the privity, and conſent, of all parties; if blunders are made in law pleadings, that are upon record, they cannot be amended without the leave of the court, which has the cuſtody of ſuch records: a truſtee in ſuch deed would not pay a ſum of money contrary to the expreſs words of the deed, but would wait till the matter was ſet right; nor would a party in any cauſe preſume upon a miſtake in a record, to diſobey the orders of a court of juſtice; and will you, Gentlemen, give leſs authority to an act of the legiſlature, than to a private deed, or the record of any petty court of law?

We muſt ſuppoſe the legiſlature will be as jealous of their reſolutions, as the Eaſt-India company are of theirs. You cannot have forgot the proceedings of a late general court, upon the ſubject of diſmiſſing the proſecutions brought againſt ſome

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of your ſervants abroad.--This buſineſs was brought on at that court, on account of the clamours raiſed without doors, and at the recommendation of a worthy member, to whom you owe the two acts of parliament, that you then ſo much deſired to be made, and now ſo much wiſh to break through. It was propoſed at that court, that the queſtion for diſmiſſing theſe proſecutions ſhould be put to a ballot, to convince all the world, that the reſolution of the 6th of May, for this diſmiſſion, which was confirmed on the 8th, was not a partial one, but agreeable to the ſenſe of all the proprietors taken at large. I believe there was not a proprietor in the court who did not wiſh that ſuch a ballot could be taken; but when it came to be conſidered, that the queſtion then propoſed to be ſubmitted to a third deciſion, had been unanimouſly voted on the 6th of May, and as unanimouſly confirmed on the 8th, the great importance of giving weight, and ſtability,

to their reſolutions, determined the wiſdom of that court, to put the propriety of ſuch a meaſure to the teſt of a previous queſtion, which was propoſed, put, and carried, by a great and reſpectable majority, againſt a third conſideration.

You will after this, Gentlemen, aſſume with an ill grace, that the parliament are not to ſupport theſe reſolutions; however you may wiſh to have them reconſidered, or repealed. They certainly will ſupport their reſolutions, and I need not remind you that the breach of an act of parliament will be a forfeiture of your charter.---And though a gentle adminiſtration might treat your dividing upon ſuch a notion of a miſtake with great lenity, what are you not to expect, if the miniſter ſhould ſay, you have made the dividend we meant to reſtrain; we reſtrained it, becauſe you convinced us it would be improper and improvident; you have ſince changed your mind,

mind, and you would alter the law? Here even the lenity of the preſent miniſtry cannot avail you; your charter would be forfeited, and the world would not pity, but laugh at your preſumption. But to ſuppoſe ſtill, that the legiſlature are miſtaken, may we not ſuppoſe too a change in the preſent adminiſtration, and that a future miniſter may embrace this, as a fair opportunity, to ſeize upon the charter, or at leaſt to ſqueeze the company, and make them purchaſe a forgiveneſs at a very high price? If we plead that we injured nobody, it may be ſaid, we have inſulted the dignity of parliament, and a miniſter, who may be no friend to the company, will have a very plauſible pretence to make you part with your millions for the public good.

However heavy you ſhould find the rod of power, the world will not then hearken to your complaints of ſeverity; you have already drawn upon you the cen-

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ſure of your fellow ſubjects, by the reſolution of the 6th of May, with regard to your dividends, which they ſay were made, in defiance of the king's miniſters. The previous queſtion upon the affair of diſmiſſing the proſecutions has not retrieved your credit among them. What will they not think, what will they not ſay, if you divide thus in violation of a recent act of parliament? They ſee the legiſlature has determined you ſhall not divide, becauſe you have proved you cannot divide; will they not ſay now, that you have determined, in your turn, you will divide, becauſe the legiſlature has ſaid you ſhall not divide?

I conjure you therefore, Gentlemen, uſe the utmoſt caution at the preſent criſis, call in the ableſt aſſiſtance, whilſt you are making a conſtruction on theſe acts of parliament, nor preſume too far to truſt your own judgments.

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I am the more earneſt in this recommendation, as I find you miſtake the intention, and operation, of theſe acts, with reſpect to a Chriſtmas dividend, as you do with reſpect to this you are now going to pay. I underſtand, it is your opinion, that in order to make a dividend of 5 l. *per cent.* at Chriſtmas next, a court may be called in September with the ſeven days notice, preſcribed by the ſaid act, cap. 49, and 5 l. *per cent.* may be then declared, by a vote taken by ballot, to be payable at Chriſtmas. I muſt remind you, that the vote for 12 l. 1-half, paſſed on the 6th of May, ſtands unrepealed by you, or by parliament, and by clauſe C. you cannot make any declaration of a dividend, but at the diſtance of five months from the laſt declaration; which five months, from the 6th of May, will not be expired, till October, when you cannot hold the Michaelmas quarterly court, becauſe your charter, in page 36, expreſsly ſays, it muſt be held

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in the month of September. You cannot therefore declare any dividend till the Chriſtmas court, as by the ſaid clauſe C. every declaration muſt be made at a quarterly court; nor can you even then declare a dividend of 5l. *per cent.* as the 29th by-law will ſtand in your way, which enacts, "that no alteration ſhall be made in the dividend, on the capital ſtock of this company, without firſt giving ſix months public notice;" and ſuch notice cannot be given of the intended alteration of dividend, from 6l. 1-4th to 5l. *per cent.* You ſee, therefore, that no dividend can be declared at Chriſtmas next but the 6l. 1-4th, and that may be conſiſtently declared, without infringing any act of parliament, or any of your own by-laws.

Do you aſk then, how I would conſtrue the late acts? and what meaſures I would adviſe you to take? My deſign is only to awaken your *caution*. But as a well-wiſher

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to you and the company, and intereſted in it's welfare, I will further offer my ſentiments on the conduct neceſſary to be obſerved on this occaſion.

I conſider the intention of the legiſlature, to be what is profeſſed in the preamble of cap. 49, to prevent improper and improvident dividends: you only proved, when the affair was before parliament, the dividend at Midſummer, to be improper and improvident, becauſe the homeward-bound ſhips were not arrived, the advices from Lord Clive were not received, and the annual account itſelf was not yet made up. It was not, nor could it at that time be diſcloſed to parliament, what dividend at Chriſtmas would be improper, or improvident; the legiſlature has therefore reſtrained your Midſummer dividend, and has prevented your declaring any dividend at all, till the next ſeſſion, which is expected in November; and if they ſhall

then ſee no cauſe to reſtrain you further, you will be at liberty to declare and divide your 6l. 1-4th *per cent.* at Chriſtmas; but if they ſhould then find you in no better ſituation then they left you in the laſt ſeſſion, you may expect to be reſtrained by a freſh law, in that dividend, as you are in this.

Are we then, ſay you, to loſe the preſent dividend for ever? As things ſtand at preſent, I anſwer, yes. If you divide, you divide in defiance of the legiſlature, at the riſque of your charter, and your own perſons; if you call a general court, and, with the ſanction of ſuch a court, apply to parliament, by an humble petition, to have your Midſummer dividend reſtored; there will be no room to believe the legiſlature will not take off the reſtriction, if you prove yourſelves in a condition to make the dividend you propoſe, as we may be confident they would be ready to rectify a miſtake, in any act, whenever it ſhould

be pointed out to them. I muſt however add, if the annual account, which the gentlemen would not ſuffer you to produce, at the laſt general court, will not bear the light, ſubmit with patience to the preſent loſs; but if you think it will prove the dividend of 5l. *per cent.* at this Midſummer, and 6l. 1-4th *per cent.* at Chriſtmas, will be neither improper or improvident, you will ſee this reſtricting clauſe *repealed abſolutely, totally, and immediately.*

I am, &c.

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